

<b>Notice of Allowability</b>	Application No.	Applicant(s)
	10/003,998	DIETMAIER, WOLFGANG
	Examiner	Art Unit
	Ethan Whisenant, Ph.D.	1634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTO-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to the election filed 21 APR 03.
2.  The allowed claim(s) is/are 1-6 and 14. 14 NOV 01
3.  The drawings filed on ✓ are accepted by the Examiner.
4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All    b)  Some\*    c)  None    of the:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

5.  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - (a)  The translation of the foreign language provisional application has been received.
6.  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8.  CORRECTED DRAWINGS must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1)  hereto or 2)  to Paper No. \_\_\_\_\_.
  - (b)  including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet.

9.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

#### Attachment(s)

1 <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	4 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____.
5 <input type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. _____.	6 <input checked="" type="checkbox"/> Examiner's Amendment/Comment
7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material	8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance
	9 <input type="checkbox"/> Other

**NOTICE OF ALLOWABILITY**

**1.** Applicant's election of Group I (Claims 1-6) without traverse in the paper filed 21 APR 03 is acknowledged. Claims 7-13 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. The restriction requirement has now been reconsidered, is deemed proper and is therefore, herein made **FINAL**.

**SEQUENCE RULES**

**2.** This application complies with the sequence rules and the sequences have been entered by the Scientific and Technical Information Center.

**EXAMINER'S AMENDMENT**

**3.** An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given on 30 May 03 and 02 JUN 03 by Rahul Pathak.

Amend the application as follows:

**Cancel Claims : 7-13**

Amend **Claim 4** to read :

**4.** The method according to Claim 3, wherein the at least one hybridization probe is labeled.

**In Claim 5**

Change --- fluorophor --- to --- fluorophore ---

Amend **Claim 6** to read :

6. The method according to Claim 5, wherein the fluorophore of the probe comprising a first segment which is complementary to a nonrepetitive region and a second segment which is complementary to an adjacent repetitive region is attached at the first segment of the probe.

Add **Claim 14**

14. The method according to Claim 4, wherein the hybridization probe is labeled with a fluorophore.

**REASON FOR ALLOWANCE**

4. **Claim(s) 1-6 and 14** is/are allowable over the prior art of record because the prior art considered does not teach or reasonably suggest the methods for analyzing a target nucleic acid consisting of repetitive and nonrepetitive sequences as recited in Claims 1 and 2. In particular, the closest prior art (i.e. the WO documents cited on the attached PTO-892) do not teach or reasonably suggest, either alone or in combination with the other prior art considered, the methods for analyzing a target nucleic acid consisting of repetitive and nonrepetitive sequences as recited in Claims 1 and 2 wherein the polynucleotide hybridization probe has the structure recited in Claims 1 and 2.

**CONCLUSION**

5. **Claim(s) 1-6 and 14** is/are allowable for the reason(s) set forth above and have now been renumbered as Claims 1-7.

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**6.** Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ethan Whisenant, Ph.D. whose telephone number is (703) 308-6567. The examiner can normally be reached Monday-Friday from 8:30AM -5:30PM EST or any time via voice mail. If repeated attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, W. Gary Jones, can be reached at (703) 308-1152.

The fax number for this Examiner is (703) 746-8465. Before faxing any papers please inform the examiner to avoid lost papers. Please note that the faxing of papers must conform with the Notice to Comply published in the Official Gazette, 1096 OG 30 (November 15, 1989). Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 308-0196.



ETHAN WHISENANT  
PRIMARY EXAMINER